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JOHN F. DAVIS, CL

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 457

CALIFORNIA DUMP TRUCK OWNERS ASSOCIATION, A CORPORATION; ROBERT BRIERLEY, HERBERT BEHLOW, AND HOWARD T. FRY, *Petitioners,*

v.

HEAVY, HIGHWAY, BUILDING AND CONSTRUCTION TEAMSTERS COMMITTEE FOR NORTHERN CALIFORNIA, AN UNINCORPORATED ASSOCIATION; J. R. WARD, CHAIRMAN THEREOF; WESTERN CONFERENCE OF TEAMSTERS, AN UNINCORPORATED ASSOCIATION; EINAR MOHN, PRESIDENT THEREOF, *Respondents.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL, STATE OF CALIFORNIA, FIRST APPELLATE DISTRICT, DIVISION TWO.

BRIEF FOR RESPONDENTS IN OPPOSITION

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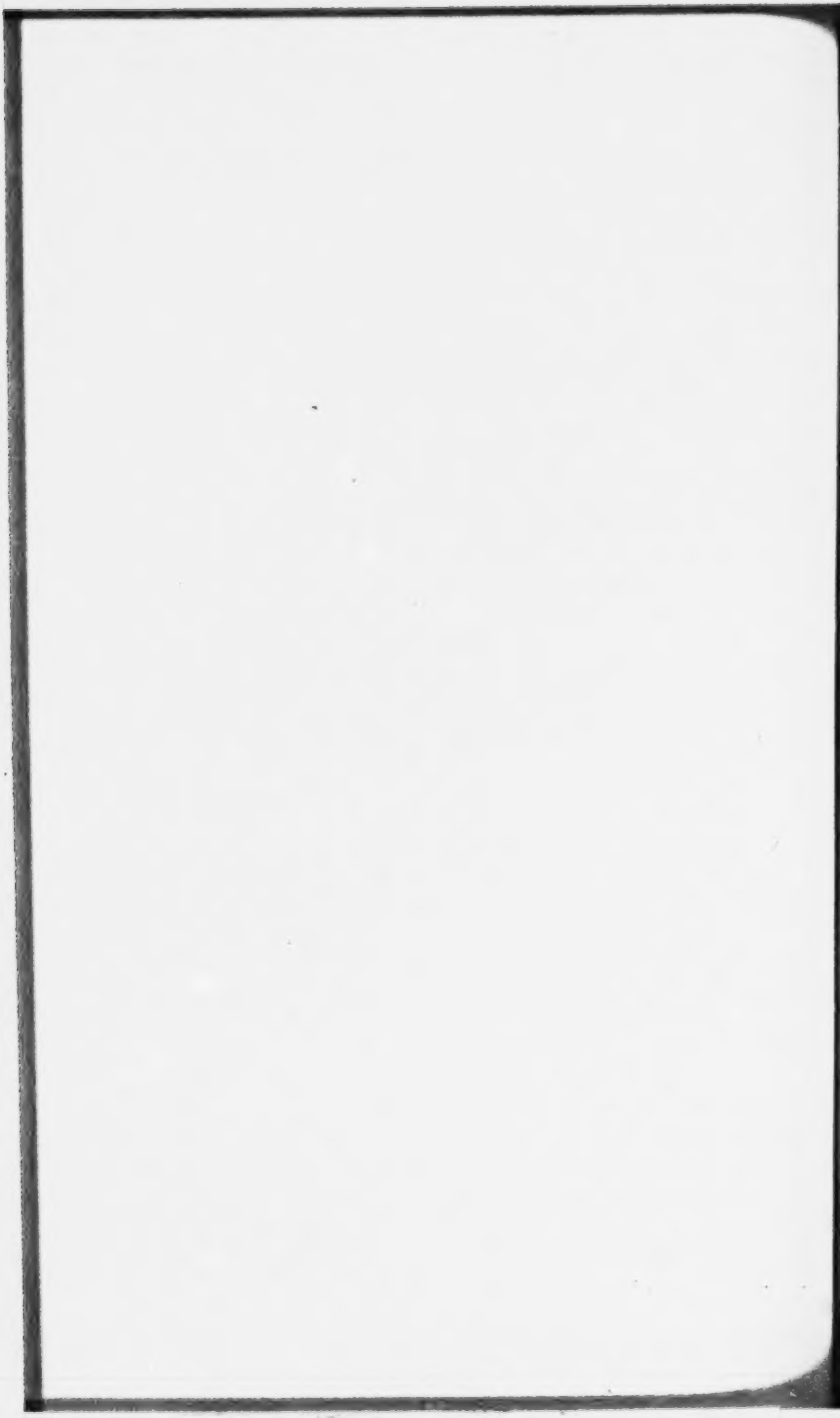

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ARGUMENT

1. The petitioners herein seek review of the decision of the District Court of Appeal of the State of California in which the District Court of Appeal held:

The owner-operator clause in the present case cannot be distinguished from that in the *Oliver* case. Thus, as the subject matter of the contract concerns wages, hours and other terms and conditions of employment upon which federal law directs the parties to bargain, the respondent court has no jurisdiction to consider the cause. (*San*

> *Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236, 244 [79 S. Ct. 733, 3 L. Ed. 2d 775]; *Calise v. Superior Court*, 159 Cal. App. 2d 126, 132 [323 P. 2d 859].) The subject matter of the controversy is one which the United States Supreme Court has determined is in the area of exclusive federal jurisdiction. [Appendix B of Petition, pp. 54-55.]

The lower court thus expressly found that the owner-operator clause in the instant case is indistinguishable from the owner-operator provisions in *Local 24, International Brotherhood of Teamsters v. Revel Oliver*, 358 U.S. 283; 362 U.S. 605.[1]

The clause of the collective bargaining agreement at issue in this litigation (see Appendix C of Petition, pp. 58-64), is obviously modeled after, and has the same object as, the Article that was before this Court in the *Oliver* cases, *supra*. While less detailed, it is no different, except as to those changes resulting from the inherent differences between the construction industry and the over-the-road freight hauling industry. And what was said by this Court of the Article involved in *Oliver, supra*, 358 U.S. at 294 is equally applicable to the contract provisions presently before this Court:

> . . . This is thus but an instance . . . in which a union seeks to protect lawful employee interests against what is believed, *rightly or wrongly*, to be a "scheme or device utilized for the purpose of escaping the payment of union wages and the assumption of working conditions commensurate with those imposed under union standards." *Milk Wagon Drivers' Union, Local No. 753, International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America v. Lake Valley Farm Products, Inc.*, 311 U.S. 91, 98, 99; 61 S. Ct. 122, 126; 85 L. Ed. 63 . . . the point of the Article is *obviously* not price fixing but wages. (Emphasis added.)

Nor is there any merit to petitioners' contention that the instant case can be distinguished from the first *Oliver* decision, *supra*, on the ground that the owner-drivers in *Oliver* were employees while here they are independent

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[1] Article XXXII of the Teamsters Central States Area Over-the-Road Motor Freight Agreement which was before this Court in the *Oliver* cases, *supra*, is set forth in an Appendix to the first *Oliver* decision, 358 U.S. at 322-26.

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contractors. In *U.S. v. Drum*, 368 U.S. 370, 382-383 n. 26, this Court stated:

> *Teamsters Union v. Oliver*, 358 U.S. 283, did not, as appellees suggest . . . hold that owner-operators are in any sense "employees." That case held that a bargaining unit including an overwhelming majority of concededly employed drivers of carrier-owned equipment was entitled, under § 8(d) of the National Labor Relations Act, 61 Stat. 142, 29 U.S.C. § 158(d), to bargain to impasse concerning minimum rentals to be received by owner-drivers. It was not necessary to determine whether the owner-drivers were "employees" protected by the Act, since the establishment of the minimum rental to them was integral to the establishment of a stable wage structure for clearly covered employee-drivers. See *id.*, at 294-295.

Hence, it is clear that the status of the owner-operators is of no significance. Further the intent and effect of the contract clause in question is to change the status of the owner-operators from independent contractors to employees.

Respondents submit that the *Oliver* cases, *supra*, stand for the following propositions:

(a) the attempted resolution of the problems created by the impact of the use of owner-operators on a contractor's employees through the processes of collective bargaining may not be impeded by the application of inconsistent state policies in the area of restraint of trade; and

(b) the duty to bargain collectively concerning owner-operators and the rental of their equipment to contractors under these circumstances is an obligation imposed by Sections 8(a)(5), 8(b)(3) and 8(d) of the National Labor Relations Act, as amended, and bargaining on these subjects is a protected right of the employees of the contractors under Section 7 of the Act.

In the light of these holdings, an assumption of jurisdiction by the Courts of California would have been in derogation of the Supremacy Clause of the Constitution of the United States. The foregoing conclusion is reinforced by the decisions of this Court on certiorari to the Supreme Court of the State of California in *Garmon v. San Diego Bldg.*

Trades, 353 U.S. 263 and *Garmon v. San Diego Bldg. Trades*, 359 U.S. 236. Nor does petitioners' contention that the decision below forecloses petitioners from any remedy warrant consideration inasmuch as this Court stated in *Garmon II, supra* at 245-6:

> . . . the Board may also fail to determine the status of the disputed conduct by declining to assert jurisdiction, or by refusal of the General Counsel to file a charge, or by adopting some other disposition which does not define the nature of the activity with unclouded legal significance. This was the basic problem underlying our decision in *Guss v. Utah Labor Relations Board*, 353 U.S. 1, 77 S. Ct. 598, 609. In that case we held that the failure of the National Labor Relations Board to assume jurisdiction did not leave the States free to regulate activities they would otherwise be precluded from regulating. It follows that the failure of the Board to define the legal significance under the Act of a particular activity does not give the States the power to act. In the absence of the Board's clear determination that an activity is neither protected nor prohibited or of compelling precedent applied to essentially undisputed facts, it is not for this Court to decide whether such activities are subject to state jurisdiction. The withdrawal of this narrow area from possible state activity follows from our decisions in Weber and Guss . . . .

Petitioners argue that without conducting a trial or taking additional testimony, the lower court could not determine that there was no state court jurisdiction over the subject matter of this suit. This Court has recognized "that it is not easy for a state court to decide, merely on the basis of a complaint and answer, whether the subject matter is the concern exclusively of the federal Board and withdrawn from the State." *Weber v. Anheuser-Busch, Inc.*, 348 U.S. 468, 481. Nevertheless this Court has held that where the conduct may be reasonably deemed to come within the protection afforded by the Wagner and Taft-Hartley Acts, the state court must decline jurisdiction. *Weber v. Anheuser-Busch, Inc., supra.* "The governing consideration is that to allow the states to control activities that are *potentially* subject to federal regulation involves too great a danger of conflict with national labor policy." *San Diego*

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Bldg. Trades Council v. Garmon, supra, 359 U. S. at 246. (Emphasis added.)

2. Petitioners' contention as to the failure of the lower court to look beyond the record before it does not state a ground for review since this Court will not assert its jurisdiction merely to review a decision of a state court upon a question of fact. The lower court's determinations that "[t]he owner-operator clause in the present case cannot be distinguished from that in the *Oliver* case . . ." and that "the subject matter of the contract concerns wages, hours and other terms and conditions of employment . . ." were sufficient to sustain the issuance of the peremptory writ of prohibition below, and no valid reason has been advanced to warrant review of these factual determinations. The court below stated with respect to the relevant California law governing prohibition:

> It is well settled that where the trial court has determined that it had jurisdiction, prohibition will lie to prevent exercise thereof when jurisdiction is challenged in that court by demurrer, motion, plea or other objection of some kind (*Harden v. Superior Court*, 44 Cal. 2d 630-634 [284 P. 2d 9]). The writ is a necessary and proper method of obtaining relief under the circumstances (*Tide Water Assoc. Oil Co. v. Superior Court*, 43 Cal. 2d 815-820 [279 P. 2d 35]). [Appendix B of Petition, p. 49.]

3. No conflict exists between the decision below and the decision of the Court of Appeals in *Jewel Tea Co., Inc. v. Local Unions, Etc., Amalgamated Meat Cutters & Butcher Workmen of North America*, 274 F.2d 217 (7th Cir.), cert. denied, 362 U.S. 936. *Jewel Tea, supra,* was an action brought in a United States district court under Sections 1 and 2 of the Sherman Act, 15 U.S.C. § 1, 2, seeking relief from an alleged conspiracy between a trade association and a labor union to suppress competition by preventing the sale of meat products at retail establishments during evening hours. That case was thus concerned with the question of the applicability of the *federal* antitrust laws to labor unions and did not present an issue of *state* court jurisdiction over matters which are arguably

subject to the federal labor laws. Even if a conflict were to exist, the conflict would not be between a decision of a court of appeals and a highest state court since the California District Court of Appeal is not the highest state court of California.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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